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OFFICE OF PETITIONS

In re Application of
Xian-Ming Zeng
Application No. 10/646,361
Filed: August 21, 2003
Attorney Docket No. TEVNHC 3.0-587

DECISION ON PETITION
UNDER 37 CFR 1.55(c)

This is a substitute decision on the petition under 37 CFR 1.55(c), filed June 28, 2007, and on the renewed petition under 37 CFR 1.55(c), filed November 1, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of a foreign United Kingdom application; namely, Application No. 0219514.7, filed August 21, 2002.

The petition is **DISMISSED** as moot for the reason stated below.

On filing, this application claimed benefit of priority to two foreign applications; namely, United Kingdom Application Nos. 1219513.7, filed August 21, 2002, and 1219513.9, filed August 21, 2002. However, in the petitions, petitioner states that the wrong application number was provided for one of the applications – Application No. 1219513.7 should have been 1219514.7, which has the same filing date as the incorrectly cited application.

The current policy of the Office is that, where the application number of the foreign priority document is incorrect but the filing date is correct, no petition and surcharge fee would be required since the Office was able to schedule the application for publication with the filing date given and the prior art date under 35 U.S.C. 102(e) would not be affected. In this regard, petitioner's attention is directed to the USPTO.gov website under the American Inventor's Protection Act of 1999 > Eighteen-Month Publication Questions and Answers, which states:

CX12. Applicant filed an application with a foreign priority claim. The applicant identified the correct filing date, April 21, 2004, of the prior foreign application in the claim, but referenced the incorrect application number of the prior foreign application (should have been 2,464,964, instead of 2,464,999). If applicant wants to correct the application number in the priority claim after the four month period would a petition under 37 CFR 1.55(c) and the surcharge set forth in 37 CFR 1.17(t) be required? (added 4Feb2005)

No, a petition and the surcharge would not be required because the Office was able to properly schedule the application for publication with the filing date given and the prior art date under 35 U.S.C. 102(e) would not be affected.

In view of the above, no petition and surcharge are required to correct the application number of the foreign application. Accordingly, the surcharge fee assessed to the petition under 37 CFR 1.55(c) on June 28, 2007 will be refunded to petitioner's deposit account in due course.

Receipt is acknowledged of the Supplemental Declaration for Utility or Design Patent Application (37 CFR 1.67) received with the renewed petition on November 1, 2007, which corrects the previous error in the application number of the above-noted United Kingdom foreign reference. A Corrected Filing Receipt with the corrected foreign reference has been mailed under separate cover.

This application is being referred to Technology Center AU 1616 for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d). It is noted that a non-final Office action was mailed on July 18, 2007. Petitioner is advised that failure to timely reply will result in the abandonment of this application.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3218.



Frances Hicks
Petitions Examiner
Office of Petitions